IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-04-2007

CORAM:

THE HONOURABLE MR. JUSTICE S.TAMILVANAN

CRL.O.P.No.873 of 2006
and Crl.M.P.No.113 of 2006

G.Priyamalini .. Petitioner /Accused No.2

vs.

K.Rangasamy .. Respondent/Complainant

Petition filed under Section 482 Cr.P.C, seeking a direction, to call for the records of the learned Judicial Magistrate No.3, Coimbatore in C.C.No.1714 of 2005 and quash the proceedings on the grounds stated therein.

For Petitioner : Mr.Ananda Ramani

For Respondent : Mr.K.Doraisamy
Senior Counsel for
M/s. Muthumani Doraisamy

O R D E R

This Criminal Original Petition has been preferred under Section 482 of the Code of Criminal Procedure, seeking an order to quash the criminal case in C.C.No.1714 of 2005, pending on the file of the learned Judicial Magistrate No.3, Coimbatore.

2. The petitioner herein is accused number 2 in the criminal case taken on file, based on a private complaint given by the respondent herein for alleged offence punishable under Section 347, 357, 392, 441, 447 r/w 120-B of IPC on the file of the aforesaid Judicial Magistrate. The petitioner herein / A2 was Sub-Inspector of Police, attached to Central Crime Branch, Coimbatore, on the date of the complaint. It is not in dispute that the aforesaid case has been registered on the complaint given by the respondent herein. As per the complaint, on 20.07.2005, at about 5 a.m, the petitioner / A2 had gone to the house of the respondent along with A1 and others, entered into the pooja room and forcibly taken the respondent herein, aged about 67 years, suffering from various ailments to the police station in a car, and threatened and obtained his signatures at the police station at the instigation of the co-accused / A1 and thereby, the petitioner herein committed offence, which is not connected with her

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official duty.

3. According to the petitioner herein, she had registered a case on 16.07.2005 in FIR No.30 of 2005 against the respondent herein for the offence under Section 406 IPC, on the private complaint filed by Velusamy / A1, against the respondent Rangasamy and the same had been forwarded under Section 156 (3) of the Code of Criminal Procedure to the Central Crime Branch, Coimbatore for investigation. According to the petitioner, she enquired both the parties, namely, the respondent and Velusamy / A1 and had compromised the matter. On 20.07.2005, the respondent gave a letter, stating that he had settled the matter with Velusamy / A1, by paying Rs.4,50,000/- (Rupees four lakhs fifty thousand only) and settled the issue on 21.07.2005. According to the petitioner, Velusamy / A1 also gave a letter, stating that he had received the aforesaid Rs.4,50,000/ - (Rupees four lakhs fifty thousand only) from the respondent / complainant and accordingly, final report was filed before the Judicial Magistrate No.VI, Coimbatore and the same was referred as mistake of fact.

4. In this Criminal Original Petition, the legal issued raised by the petitioner is that the criminal case pending before the Judicial Magistrate is not legally sustainable, due to non-compliance of Section 53 of the Tamil Nadu District Police Act, 1859. The second contention is, as per the circular in R.O.C.No.1062/2003/F, dated 22.05.2003, issued by the Registrar General of the High Court, only Chief Judicial Magistrate is empowered to take cognizance on the complaint given against the petitioner, being a police official and dispose the same and therefore, the criminal case, pending before the Judicial Magistrate No.3, Coimbatore, is not legally maintainable.

5. Mr.K.Doraismay, learned Senior Counsel appearing for the respondent submits that one Kandasamy had borrowed a sum of Rs.5,00,000/- (Rupees five lakh only) from the respondent herein and handed over 8 signed cheques, by specifying the amount for future payment, for which Velusamy had given an undertaking to discharge the debt. Out of the aforesaid 8 cheques, two cheques given were subsequently presented for payment, on the due date, but the same were dishonoured by the bank and on account of the same, action under Section 138 of Negotiable Instruments Act has been taken, after issuance of Notice. In the mean time, a criminal complaint was given by Velusamy / A1, against the respondent herein, which was originally rejected by police. Subsequently, A1 gave a private complaint before the Judicial Magistrate No.VI, Coimbatore. The learned Judicial Magistrate No.VI, Coimbatore, forwarded the same to Sub-Inspector of Police, Central Crime Branch. The petitioner / A2, at the instance of A1, went to house of the respondent, entered into the pooja room therein, though the petitioner was aged about 67 years, he was taken to the police station in a car by force and obtained his signature under threat and coercion and the petitioner, thereby committed offence, punishable under Sections 347, 357, 392, 441, 447 r/w 120-B of IPC.

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6. The co-accused Velusamy / A1 had filed a separate petition under Section 482 of the Code of Criminal Procedure in Crl.O.P.No.5747 of 2006 before this Court, to quash the proceedings, but was dismissed as withdrawn. The first contention raised by the petitioner is that as per Section 53 of Tamil Nadu District Police Act, 1859, the criminal case instituted against the petitioner is not legally maintainable. The second contention raised in the petition is that as per the High Court circular available at page number 9 of the typed set, the case has to be dealt with by the Chief Judicial Magistrate of the District and therefore, the case pending before the learned Judicial Magistrate No.3, Coimbatore is not sustainable in law.

7. Mr.K.Doraisamy, learned Senior counsel contended that the petitioner / A2 had entered the house of the respondent / complainant and forcibly taken the petitioner, a senior citizen, aged about 67 years to the police station and obtained statement and signatures under threat and coercion, ignoring his ailment and health condition. Therefore, the aforesaid act of the petitioner / A2 is against law and as such the defence raised under Section 53 of the Tamil Nadu District Police Act, 1859, has no application, In support of his contention, he drew the attention of this Court, to Section 53 of the Tamil Nadu District Police Act, 1859, which reads as follows :

> "53. Limitation of action - All actions and prosecutions against any person which may be lawfully brought for anything done or intended to be done, under the provisions of this Act, or under the provisions of any other law for the time being in force conferring powers on the police shall be commenced within three months after the act complained of shall have been committed and not otherwise; and notice in writing of such action and of the cause thereof shall be given to the defendant; or to the Superintendent, or other superior officer of the district in which the act was committed, one month at least before the commencement of the action; and no plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action brought, or if a sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action, brought by or on behalf of the defendant; and though a decree shall be given for the plaintiff in any such action, such plaintiff shall not have cost against the defendant unless the judge, before whom the trial shall be, certify his approbation of the action.
>
> Bar to action - Provided always that no action shall in any case lie where such officers shall have been prosecuted criminally for the same act."

A perusal of the section clearly shows that first part of the Section

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deals with criminal action or prosecution, for which three months limitation is prescribed, but no prior notice is needed to file complaint against the police official, if the act of the police official is illegal and not in furtherance of his or her official duty. It is not in dispute that the second part relates to compensation, which is only a civil action.

8. As contended by the learned Senior counsel, in the light of the decision of the Hon'ble Apex Court, I am of the considered view that no prior notice is needed to initiate a criminal case against police official, if an act is done by the police official against law and not in furtherance of his or her official duty. In support of his contention, the learned counsel cited the decision of the Hon'ble Supreme Court, in S.P.Vaithianathan v. K.Shanmuganathana, reported in (1994) 4 SCC 569, which reads as follows :

> " Before a prosecution is terminated as barred by Section 53 of the Act, the accused must show that on the allegations made in the complaint it ex facie appears that the act complained of was done under the provisions of the Act or under the provisions of any other law for the time being in force where under powers are conferred on the police. It is true that under Section 21 of the Act a police officer can be said to be on duty all the 24 hours. The prosecution launched against the respondent is in regard to the ill-treatment meted out to the appellant when the latter visited the former in response to the summons. It was no part of the duty on the police to beat and torture the appellant when he presented himself before the respondent in response to the summons. By no stretch of reasoning can it be said that the respondent's action of tortuting the appellant was in discharge of any duty or function under the Act or under any other law. It is also difficult to say, if the allegations made are taken at their fact value, that the respondent's action was incidental to or in furtherance of his duties and functions under any law. It must be realised that in order to avail of the benefit of Section 53 of the Act, the respondent must show that he acted 'under' the act or any other law. Merely because the appellant was called through a summons issued under law, the conduct of beating and torturing the appellant on the latter appearing in obedience to the summons cannot establish any nexus between the official act of issuance of summons and the action of the respondent on the appearance of the appellant. Unless a relationship is established between the provision of law 'under' which the respondent purports to act and the misdemeanour complained of, the provision of Section 53 will not be attracted. In the present case the allegation in the

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> complaint is that while the appellant was called by service of a summons presumably to inquire into allegations of illicit distillation, the respondent had merely used it as an excuse to secure his presence but in fact his real intention was to beat him up to prevent him from complaining against those who were paying him 'mamool' (illegal gratification) money. Thus according to the appellant the respondent bore a grudge against him and, therefore, he misused his power, issued a summons, secured his presence and then tortured him. He has charged him for the commission of offences under Sections 341, 342, 363, 364, 506 (part II) and 307 IPC. These do not attract the provision of Section 53 of the Act."

In the aforesaid case, the police official had taken action against the complainant, in order to safeguard certain persons, on account of getting illegal gratification for illicit distillation of arracks.

9. The next question is about the circular of this court / High Court of Madras, sent to the subordinate courts in R.O.C.No.1062/2003/F, dated 22.05.2003, whereby the subordinate courts have been instructed as follows : "All the complaints against police person be filed before the court of Chief Judicial Magistrate only and the Chief Judicial Magistrate concerned shall take cognizance of the matter and dispose of the same as per the provisions and laid down therefor".

10. Learned Senior counsel for the respondent contended that the High Court circular is only an executive direction, which would be binding, only if it is in confirmity with the provisions of the criminal procedure code, or any other law, otherwise, no reliance cannot be placed on the circular, since there is no bar under the Code of Criminal Procedure and if the court feels that the Magistrate, who is under the control of the High Court cannot violate the directions of this Court, the case pending before the Judicial Magistrate No.3, Coimbatore, may be transferred to the Chief Judicial Magistrate, Coimbatore to be disposed according to law.

11. In the light of the decision of the Hon'ble Apex Court, relied on by the learned Senior counsel for the respondent, reported in (1994) 4 SCC 569 it is clear that Section 53 of the Tamil Nadu District Police Act, 1859 would be attracted, only if the act of the police official is in furtherance of his or her official duty. I am of the considered view that the allegation raised against the petitioner / A2 in the complaint would prima facie show that her act was not in furtherance of her official duty.

12. As contended by the learned Senior Counsel for the respondent, even in the petition, at paragraph number 3, the petitioner has stated as follows " The petitioner submits that the respondent therein has alleged in the complaint that he was forcibly taken to the police station and he was threatened by showing stick and was compelled to settle the matter by paying money. It is further alleged that he was threatened to be arrested

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and his photos would be published in the Newspaper. The petitioner submits that it is further alleged that after payment of Rs.4.65 lakhs, the respondent was forced to write and put his signature to the dictation of the petitioner and the other accused." Therefore, it has to be gone into by the trial court, since prima facie case has been made out against the petitioner / A2 and it cannot be construed as an abuse of process of the court, so as to invoke Section 482 Crl.P.C.

13. On a perusal of the petition and the materials available on record, and also considering the arguments advance by both the learned counsel, I am of the considered view that the petitioner / A2 has not made out any case, so as to quash the criminal proceeding, pending before the learned Judicial Magistrate No.3, Coimbatore in C.C.No.1714 of 2005. It is clear that under Section 482 of Code of Criminal Procedure, this Court can interfere with the criminal proceedings only to prevent abuse of process of law or to meet the ends of justice. On the above said facts and circumstances, I find no abuse of process of court or any other ground to interfere with the same. However, considering the circular of this Court in R.O.C.No.1062/2003/F, dated 22.05.2003, I find it proper and reasonable to transfer the case to the Chief Judicial Magistrate, Coimbatore to dispose the same according to law.

14. Accordingly, the case is ordered to be transferred to the Chief Judicial Magistrate, Coimbatore from the file of the Judicial Magistrate No.3, Coimbatore. The Judicial Magistrate No.3, Coimbatore, is directed to send the case records, pursuant to this order, within 30 days from the date of receipt of a copy of this order. The Chief Judicial Magistrate, Coimbatore shall dispose the same, after receipt of the case records from the Judicial Magistrate, Coimbatore, according to law, as expeditiously as possible.

15. This Criminal Original Petition is disposed of with the above direction. Consequently, connected criminal miscellaneous petition is closed.

tsvn

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Chief Judicial Magistrate
   Coimbatore.

2. The Judicial Magistrate No.3
   Coimbatore.

3. The Public Prosecutor,
   High Court, Chennai.

+1 cc to M/s.Muthumani Doraisami, Advocate Sr.No.23245.

AKR(CO)
dcp/17.4.07

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